

1 GRANT P. FONDO (SBN 181530)  
GFondo@goodwinlaw.com  
2 **GOODWIN PROCTER LLP**  
601 Marshall Street  
3 Redwood City, CA 94063  
Tel.: +1 650 752 3100  
4 Fax: +1 650 853 1038

5 AMANDA H. RUSSO (SBN 319617)  
ARusso@goodwinlaw.com  
6 **GOODWIN PROCTER LLP**  
601 S. Figueroa Street, 41<sup>st</sup> Floor  
7 Los Angeles, CA 90017  
Tel.: +1 213 426 2500  
8 Fax: +1 213 623 1673

9 Attorneys for Respondent  
PAYWARD VENTURES, INC., d/b/a  
10 KRAKEN OR KRAKEN.COM

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION  
15

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 PAYWARD VENTURES, INC., d/b/a  
20 KRAKEN OR KRAKEN.COM, OR ITS  
PREDECESSORS, SUBSIDIARIES,  
21 DIVISIONS, OR AFFILIATES,

22 Respondent.  
23  
24  
25  
26  
27  
28

Case No. 3:23-MC-80029-JCS

**DECLARATION OF TODD SIEMERS  
IN SUPPORT OF PAYWARD  
VENTURES, INC.'S OPPOSITION TO  
PETITION TO ENFORCE INTERNAL  
REVENUE SERVICE SUMMONS**

Date: May 19, 2023  
Time: 9:30 a.m.  
Courtroom: F (15th Floor)  
Judge: Hon. Joseph C. Spero

**DECLARATION OF TODD SIEMERS**

I, Todd Siemers, do hereby declare and state as follows:

1. I am employed at Payward, Inc., which does business as Kraken (“Kraken”) and is the parent company of Payward Ventures, Inc. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would competently testify to them.

2. I have been a Kraken employee for over four-and-a-half years. My current title is Staff Data Engineer, and I have worked in the Data Engineering Department during my entire tenure at Kraken.

3. In my role at Kraken, I have developed extensive knowledge regarding the information Kraken has in its records, including with respect to user personal information and transactional activity, how that information is stored and maintained at Kraken, as well as how that information can be searched, queried, and retrieved.

4. Kraken was founded in 2011 and is a United States-based online digital asset exchange platform available to the public. Kraken offers its services to both U.S. and international users in more than 190 countries.

5. To use Kraken’s exchange services, a user must first open an account. Kraken currently offers several different levels of accounts: Starter, Express, Intermediate, and Pro. In general, Starter and Express accounts offer more limited services and thus require lower levels of verification by the user. Intermediate and Pro accounts, on the other hand, permit a wider variety of funding methods and transaction types and have higher withdrawal and transaction limits. Consequently, Intermediate and Pro account users are required to provide additional verification. During the 2016 to 2020 timeframe, all account levels required the user to input certain identity information, including first and last name, date of birth, address, email address, and phone number.

6. To register for either an Intermediate or Pro account, the user is required to confirm their identity and physical address by uploading an identification document (such as a passport or driver’s license) and proof of residence. Pro account holders are additionally required

1 to complete a Know-Your-Customer Questionnaire, which, among other things, asks questions  
2 about the account holder's occupation, source of income, and intended use of the account.

3 7. Starter, Express, and Intermediate accounts are available only to individuals, while  
4 the Pro account can be held by either an individual or a business.

5 8. As part of my duties at Kraken, I was asked to review the information requests  
6 included in the "John Doe" summons (the "Summons") served on Kraken by the IRS to  
7 determine the amount of human and systems resources that Kraken would have to expend to  
8 comply. Other members of the Data Engineering team assisted me with this review. Members of  
9 our Compliance Data team also assisted me in estimating the number of Kraken account holders  
10 that would be covered by the Summons, and I have reviewed the queries used to arrive at these  
11 estimates. As a general matter, the human and systems resources estimates I have provided herein  
12 are my best estimates based on my knowledge and experience. However, in my experience, data  
13 engineering and data analysis efforts regularly encounter unexpected obstacles, particularly when  
14 working with legacy or historical data sources and creating and implementing data collection  
15 tools that have not been previously used or tested.

16 9. We performed searches of Kraken's database to determine the number of account  
17 holders<sup>1</sup> with a current address in the United States who had engaged in cryptocurrency  
18 transactions with a combined total of at least \$20,000 in value, regardless of transaction type  
19 (whether deposit, withdrawal, trade, margin, or sale), in any one calendar year between January 1,  
20 2016 and December 31, 2020. Because the Summons does not expressly exclude account holders  
21 that only engaged in digital currency purchases, this search included accounts in which the only  
22 transactions during this period were purchases (buy-only accounts).<sup>2</sup>

23  
24 <sup>1</sup> Excluded from this search were internal or test accounts controlled by Kraken and its employees  
for their own internal operational use.

25 <sup>2</sup> Our estimates of the number of accounts covered by the Summons are a good faith effort to  
26 interpret the language of the IRS's definition of "User" and apply a corresponding methodology  
27 to Kraken's data. However, the meaning of the language, "accounts with at least the equivalent of  
\$20,000 in value of transactions (regardless of type) in cryptocurrency" is not entirely clear.  
28 Kraken may need to modify its methodology or estimates as it continues to assess the Summons  
and any data collected in response to it.

1           10.     Based on these searches, we determined that there are approximately 59,331  
2 unique Kraken accounts that are covered by the Summons. Based on our searches, we also  
3 determined that during the period of 2016 through 2020, there were approximately 160 million  
4 cryptocurrency transactions conducted by these 59,351 Kraken accounts. If the transaction  
5 threshold were increased to \$50,000, the total number of unique Kraken accounts would be  
6 approximately 38,329. If the transaction threshold were increased to \$100,000, the total number  
7 of unique Kraken accounts would be approximately 26,082.

8           11.     We also performed searches of Kraken's database to determine the number of  
9 account holders with a current address in the United States who had engaged in cryptocurrency  
10 transactions with a combined total of at least \$20,000 in value *in any one transaction type* (i.e.,  
11 buys, sells, deposits, or withdrawals) in any one calendar year between January 1, 2016 and  
12 December 31, 2020. Again, this search included accounts in which the only transactions during  
13 this period were purchases (buy-only accounts).<sup>3</sup>

14           12.     Based on these searches, we determined that that approximately 42,017 unique  
15 Kraken accounts would be included using these criteria. If the transaction threshold were  
16 increased to \$50,000, the total number of unique Kraken accounts would be approximately  
17 25,251. If the transaction threshold were increased to \$100,000, the total number of unique  
18 Kraken accounts would be approximately 16,192.

19           13.     I understand that the IRS requests the production of all user identity information,  
20 including both current and historical information, for the covered accounts. Current basic  
21 personal information that users provide to Kraken, including name, date of birth, address, email  
22 address, phone number, and, where available, taxpayer ID number, is stored and maintained  
23 either in Kraken's secure data "warehouse" or in a connected encrypted database, and Kraken has  
24 tools that permit this data to be globally queried and pulled based on a search of accounts covered  
25 by the Summons. To provide current user profile data in response to the Summons, I estimate  
26

27 <sup>3</sup> Similar to above, these are good faith estimates of the number of accounts that would be  
28 covered by this modified definition of "User." However, Kraken may need to modify its  
methodology or estimates as it continues to assess any data collected.

1 that it will take approximately two full days of data analyst time to collect and pull such data.  
2 This process may take additional time due to the data privacy restrictions that Kraken has in place  
3 to protect the personal information of its account holders. This does not include attorney time to  
4 review and coordinate the production.

5 14. On the other hand, *historical* personal and account information are not kept in  
6 Kraken's data warehouse. These data are not organized or preserved in the same manner as  
7 current user information and are not data fields that Kraken can query on a global basis in the  
8 ordinary course of its business. Kraken's data warehouse does not include data fields for  
9 previously used names, addresses, telephone numbers, emails addresses, or taxpayer ID numbers.  
10 Kraken also does not store pseudonyms.

11 15. The only way for Kraken to obtain the historical personal information for an  
12 account holder would be by accessing the separate anti-money laundering (AML) log for each  
13 individual account. However, this would present several major challenges.

14 16. Kraken's AML logs track a variety of actions taken in connection with an account,  
15 not just changes in personal information. For example, these logs track security-related actions,  
16 Suspicious Activity Report ("SAR") filings, actions taken in response to receipt of legal process,  
17 changes in account verification levels, rejected or recalled deposits, and confirmation of OFAC-  
18 related checks.

19 17. Kraken has no tools or mechanisms in place to identify or pull the information  
20 related to changes in personal information from the AML logs. Searching for, collecting, and  
21 producing this information would be extremely time-consuming and impose a significant burden  
22 on Kraken. First, were Kraken required to determine the full population of "Users" using  
23 historical residence information, Kraken would have to identify all accounts that had a previous  
24 indication of U.S. residency, even if their current account address is not in the United States.  
25 Thus, Kraken would have to analyze the AML logs for every single Kraken user, which would be  
26 millions of accounts.

27 18. In addition, Kraken's AML logs are encrypted, so they cannot simply be searched  
28 globally for residency information. Kraken would have to decrypt each AML log to determine if

1 it contained any historical U.S. residency information. It would not be feasible for Kraken to do  
2 this for all its account holders to determine whether they had “any United States-based address,  
3 telephone number, [or] email domain,” as is included in the Summons’ definition of “User”.

4 19. Even if Kraken were required to analyze the AML logs only for the 59,331  
5 accounts that meet the IRS’s definition of User to determine (i) whether any changes were made  
6 to the account holder’s personal information, and (ii) if so, what those substantive changes were,  
7 it would be extremely time consuming. Based on my experience, it is reasonable to assume it  
8 would take approximately five minutes per log for a Kraken employee to decrypt the log, review  
9 it for historical residency information, and collect that information. Thus, for 59,331 logs, it  
10 would require approximately 5,000 hours of work. In addition, historical changes to personal data  
11 have not been stored by Kraken in its AML logs for the entire period covered by the Summons, so  
12 the data collected would be incomplete. Since this is not data that Kraken formally maintains, I do  
13 not know how accurate the information retrieved would be or if we would successfully be able to  
14 collect historical personal information for all accounts.

15 20. I understand the IRS is also requesting production of complete user payment  
16 methods, such as linked bank or credit card accounts. Linked payment account are not stored in  
17 the same manner as basic user information, and Kraken’s systems are not natively designed to  
18 handle a global query into or collection of such information. To pull all payment accounts  
19 associated with the 59,331 accounts covered by the Summons, Kraken would have to design a  
20 new search query to do so. In addition, the query would likely not be able to identify the financial  
21 institution associated with the payment account, but rather only the account number associated  
22 with the payment.

23 21. In addition, the transaction history ledgers that Kraken maintains for each account  
24 do not include linked payment methods on a transaction-by-transaction basis for each deposit or  
25 withdrawal. Thus, Kraken would be limited to producing payment methods on an account-by-  
26 account basis. Based upon my knowledge of Kraken’s systems, I estimate that creating such a  
27 query and extracting the requested payment information on an account-by-account basis would  
28

1 require at least two days of work by one full-time data analyst. This does not include attorney  
2 time to review and coordinate the production.

3 22. Were Kraken required to attempt to collect and provide payment methods on a  
4 transaction-by-transaction basis, I estimate that it would require at least several weeks of work by  
5 a larger team of data engineers, data analysts, and core back-end engineers. Since this is not data  
6 that Kraken maintains, I do not know how accurate the information retrieved would be or if these  
7 efforts would be successful.

8 23. I understand that the IRS is also requesting a complete history of IP addresses that  
9 each user has used to access their account. As with historical changes to personal information  
10 and payment methods, Kraken does not store IP addresses in the same way it stores other basic  
11 personal information for a user. While the IP addresses associated with each user login and  
12 various account actions are captured in an account activity log, Kraken does not have a process in  
13 place to globally pull all historical IP addresses used by large number of accounts. To pull a  
14 record of the IP addresses that have been associated with accounts covered by the Summons,  
15 Kraken would have to separately design a query. In addition, like linked payment methods, the  
16 transaction history ledgers that Kraken maintains for each account do not include linked IP  
17 addresses on a transaction-by-transaction basis. Thus, Kraken would be limited to producing IP  
18 addresses on an account-by-account basis. Based upon my knowledge of Kraken's systems, I  
19 estimate that this would require at least three days of work from one full time data engineer, plus  
20 two days of work from one full time data analyst. This does not include attorney time to review  
21 and coordinate the production.

22 24. Were Kraken required to attempt to collect and provide IP addresses on a  
23 transaction-by-transaction basis, I estimate that it would require at least several weeks of work by  
24 a larger team of data engineers, data analysts, and core back-end engineers. Since this is not data  
25 that Kraken maintains, I do not know how accurate the information retrieved would be or if these  
26 efforts would be successful. In addition, older data from within the timeframe covered by the  
27 Summons would likely be less accurate and reliable due to historical changes in how Kraken has  
28 captured this data.



1           25. I understand that the IRS is requesting information relating to Kraken's Know-  
2 Your-Customer ("KYC") due diligence questionnaires, including information relating to the  
3 employment, net worth, and source of wealth of users covered by the Summons. Initially, Kraken  
4 does not collect KYC questionnaires for Starter, Express, or Intermediate accounts; it only does  
5 so for Pro accounts. Thus, this information is unavailable for most Kraken accounts. In addition,  
6 the information provided by users in response to due diligence questionnaires is not stored in  
7 Kraken's data warehouse. Kraken does not keep such information in a manner that allows for  
8 global inquiry or retrieval across any identified users. Rather, due diligence questionnaire  
9 responses are stored in either the AML logs for each account or in separate "tickets" that are  
10 created by Kraken's client engagement tracking system. Collecting information provided by users  
11 in response to due diligence questionnaires would require a manual, account-by-account review  
12 of the Pro accounts covered by the IRS Summons. While the IRS appears to only be requesting  
13 certain information from the KYC questionnaires, Kraken cannot search individual data fields of  
14 these questionnaires, so it would nonetheless have to look at each questionnaire to respond.

15           26. Responding to this request which would be very time consuming, cause significant  
16 interruption to Kraken's business, and burdensome. Based on my knowledge of Kraken's  
17 systems, I do not know how complete or accurate the information retrieved would be, and I  
18 estimate that this is a task that would likely require several weeks and possibly months of work by  
19 a team of data engineers, data analysts, and core back-end engineers. This does not include  
20 attorney time to review and coordinate the production.

21           27. I understand that the IRS is also requesting production of Kraken's AML  
22 "exception reports" and "records of investigation of such exceptions." Kraken does not have  
23 documents called AML "exception reports" and so cannot produce any such records. As  
24 previously stated, Kraken does maintain an AML log for each account. However, there are  
25 numerous reasons, including minor or technical issues, that entries are generated in these logs.  
26 For example, these logs track security-related actions, Suspicious Activity Report ("SAR")  
27 filings, actions taken in response to receipt of legal process, changes in account verification  
28 levels, rejected or recalled deposits, and confirmation of OFAC-related checks.



1           28. To the extent the IRS's request seeks Kraken records associated with events that  
2 trigger its AML system, and any associated investigation into material issues, determining  
3 whether accounts have associated AML records and retrieving those documents would be very  
4 time consuming and burdensome. As stated above, AML records are not kept in a manner that  
5 allows for global inquiry or retrieval across any identified users. This would require a manual,  
6 account-by-account review of the AML logs for each of the 59,331 accounts covered by the  
7 Summons. This AML data is also encrypted and would require decryption on an account-by-  
8 account basis similar to the process described in Paragraph 19. This process would cause  
9 significant interruption to Kraken's business and direct valuable engineering time away from  
10 operational priorities.

11           29. I understand that the IRS is also requesting production of account transactional  
12 activity for each of the 59,331 accounts covered by the Summons, which would cover  
13 approximately 160 million transactions. Kraken maintains a corresponding transaction history  
14 "ledger" for each account, which logs transactional activity in the account, including deposits,  
15 withdrawals, trades, and transfers. These ledgers are stored and maintained in Kraken's data  
16 warehouse and can be globally pulled for accounts subject to the Summons. Based on my  
17 knowledge of Kraken's systems, I estimate this would likely require at least one day of work for  
18 one full time data analyst and two days of work for one full time data engineer to search and  
19 extract transactional data. This does not include attorney time to review and coordinate the  
20 production.

21           30. I understand that the IRS is specifically requesting information from all executed  
22 transactions, specifically "lending, borrowing, or margin position" data, along with data relating  
23 to the receipt of cryptocurrency resulting from a "chainsplitting event such as a hard fork or  
24 promotional event." Kraken's transactional ledgers for each account include any deposits,  
25 withdrawals, or transfers of cryptocurrency conducted by the account, which would reflect any  
26 lending, borrowing or margin position that resulted in a completed transaction. It would also  
27 capture transactions resulting from chainsplitting events such as forks or "airdrops" that resulted  
28 in digital assets being credited to the account. However, chainsplitting events are not specifically

1 identified as such in the transaction ledgers. For example, depending on the details of the  
2 chainsplitting event and how that event was handled by Kraken, corresponding transactions may  
3 be captured as deposits, transfers, or adjustments to the account.

4 31. I understand that the IRS is requesting data related to “transaction hash (ID)” and  
5 “blockchain addresses” for cryptocurrency transactions. Like payments methods, the transaction  
6 history ledgers that Kraken maintains for each account do not include the transaction hash or  
7 blockchain addresses on a transaction-by-transaction basis. Thus, Kraken’s systems are not  
8 natively designed to handle a global query or collection of such information. Kraken is currently  
9 working to backfill transaction hashes or blockchain addresses into its transaction data, but that  
10 work is ongoing. At this time, Kraken cannot provide complete and accurate data regarding the  
11 transaction hashes and blockchain addresses on a transaction-by-transaction basis. Kraken does  
12 not expect to be able to provide this data completely and accurately for at least several months, if  
13 not longer.

14 32. I understand that the IRS is also requesting production of all records of account  
15 funding. As noted above, deposits, withdrawals, or transfers to and from an account are reflected  
16 in the transactional ledgers associated with each account. Beyond that, the search for and  
17 retrieval of any account funding data would be similar to the process for responding to the request  
18 for complete user payment methods. Kraken does not maintain a record of all account funding in  
19 the same way standard transactional data is stored in the ordinary course of business, and its  
20 systems are not natively designed to handle a global query into this information on a transaction-  
21 by-transaction basis. Kraken would be required to design a search query to collect account  
22 funding data on an account-level basis. Based on my knowledge of Kraken’s systems, I estimate  
23 it would take a at least two days of work for a full-time data analyst to develop a tool and to  
24 search, retrieve, and extract the information.

25 33. I understand that the IRS also requests any invoices, billing statements, receipts, or  
26 other similar documents relating to account funding transactions. It is unclear the full extent of  
27 what documents the IRS is seeking based on these descriptions. Based on my knowledge and  
28 experience at Kraken, Kraken does not send invoices, billing statements, or receipts to its users.

1 Any documents that may be captured by this request are individual records and not globally  
2 searchable data. Collection of these documents, to extent they exist, would be a very time-  
3 consuming and likely require a manual review of each of the 59,331 accounts covered by the IRS  
4 summons. It is difficult to estimate the burden of this request since it is unclear the universe of  
5 documents being sought. But as previously stated, even if only a few minutes were required per  
6 account to conduct a manual review, this would lead to thousands of hours of work.

7 ///

8 ///

9 ///

10 ///

11  
12 I declare under penalty of perjury under the laws of the United States of America that the  
13 foregoing is true and correct. Executed this 21st day of April, 2023 in the State of Virginia.

14 DocuSigned by:

15 *Todd Siemers*

16 D10493B193A94C6...

17 Todd Siemers